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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/087,594	03/01/2002	John D. Muzzy	52005-1013	1163
75	590 07/08/2003			
Scott A. Horstemeyer THOMAS, KAYDEN, HORSTEMEYER & RISLEY, L.L.P. Suite 1750 100 Galleria Parkway, N.W. Atlanta, GA 30339-5948			EXAMINER	
			ASINOVSKY, OLGA	
			ART UNIT	PAPER NUMBER
Atlanta, GA 30339-3946			1711	6
			DATE MAILED: 07/08/2003	

Please find below and/or attached an Office communication concerning this application or proceeding.

		A-S	, -
	Application No.	Applicant(s)	
Office Action Summers	10/087,594	MUZZY, JOHN D.	
Office Action Summary	Examiner	Art Unit	
TI MANUA DATE ASSISTANCE	Olga Asinovsky	1711	_
The MAILING DATE of this communication app Period for Reply	ears on the cover sheet with the c	orrespondence address	
A SHORTENED STATUTORY PERIOD FOR REPLY THE MAILING DATE OF THIS COMMUNICATION. - Extensions of time may be available under the provisions of 37 CFR 1.13 after SIX (6) MONTHS from the mailing date of this communication. - If the period for reply specified above is less than thirty (30) days, a reply If NO period for reply is specified above, the maximum statutory period w Failure to reply within the set or extended period for reply will, by statute, Any reply received by the Office later than three months after the mailing earned patent term adjustment. See 37 CFR 1.704(b). Status	36(a). In no event, however, may a reply be time within the statutory minimum of thirty (30) day will apply and will expire SIX (6) MONTHS from cause the application to become ABANDONE	nely filed s will be considered timely. the mailing date of this communication. D (35 U.S.C. § 133).	
1) Responsive to communication(s) filed on 01 M	<u> 1arch 2002</u> .		
2a) ☐ This action is FINAL . 2b) ☑ Thi	is action is non-final.		
3) Since this application is in condition for alloward closed in accordance with the practice under a Disposition of Claims			
4) Claim(s) 1-29 is/are pending in the application	•		
4a) Of the above claim(s) is/are withdraw	vn from consideration.		
5) Claim(s) is/are allowed.			
6)⊠ Claim(s) <u>1-29</u> is/are rejected.			
7) Claim(s) is/are objected to.			
8) Claim(s) are subject to restriction and/or	election requirement.		
Application Papers			
9) The specification is objected to by the Examiner			
10)⊠ The drawing(s) filed on <u>01 March 2002</u> is/are: a			
Applicant may not request that any objection to the		•	
11) The proposed drawing correction filed on		oved by the Examiner.	
If approved, corrected drawings are required in rep			
12) The oath or declaration is objected to by the Exa	ammer,		
Priority under 35 U.S.C. §§ 119 and 120) (I) (C)	
13) Acknowledgment is made of a claim for foreign	priority under 35 U.S.C. § 119(a)-(a) or (t).	
a) All b) Some * c) None of:			
1. ☐ Certified copies of the priority documents			
2. Certified copies of the priority documents			
 3. Copies of the certified copies of the prior application from the International Bur * See the attached detailed Office action for a list of the certified copies of the prior application from the prior application for a list of the certified copies of the prior application from the prior ap	eau (PCT Rule 17.2(a)).	· ·	
14) Acknowledgment is made of a claim for domestic	priority under 35 U.S.C. § 119(e	e) (to a provisional application).	
 a) ☐ The translation of the foreign language pro 15)☒ Acknowledgment is made of a claim for domesting 			
Attachment(s)			
1) ⊠ Notice of References Cited (PTO-892) 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 3) ☑ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 5	5) Notice of Informal F	(PTO-413) Paper No(s) Patent Application (PTO-152)	
Patent and Trademady Office			_

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DETAILED ACTION

Double Patenting

1. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970);and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

2. Claims 1-29 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-11 of U.S. Patent No. 6,271,270. Although the conflicting claims are not identical, they are not patentably distinct from each other because claims of the Patent 6,271,270 disclose a thermoplastic composite comprising a matrix of recycled thermoplastic and a plurality of high modulus fibers, wherein said recycled thermoplastic is derived from carpet. The recycled thermoplastic and high modulus fibers in the claims 1-11 of the Patent 6,271,270 are readable in the applicants' claims. The statement in the present claims that each of said reinforcing fibers has a minimum modulus of one million psi would be inherent in the claims 1-11 in the Patent 6,271,270 because of the same high modulus fibers are claimed in the claims 1-11 in the Patent 6,271,270.

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3. The difference between the present claims and the claims 1—11 of the patent 6,271,270 is the requirement in the present claims that a thermoplastic composite is in the form of pellets. It would have been obvious to one of ordinary skill in the art to use a thermoplastic composite in the claims 1-11 of the Patent 6,271,270 wherein a said thermoplastic composite can be palletized or granulated since any desired shape form of the thermoplastic composite can be produced in the claims 1-11 in the patent 6,271,270 by using an extruder having desired construction of die.

4.

(1) Claim Rejections - 35 USC § 103

- 5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:
 - (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.
- 6. Claims 1-29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fink U.S.Patent 5,578,357 in view of Sperk, Jr. et al U.S.Patent 5,258,445.

The present invention is a thermoplastic composite comprising a recycled thermoplastic and fibers having a high modulus, for the present claims 1-10. Also, the present claims 11-29 discloses a method of forming a thermoplastic composite by combining a thermoplastic with reinforcing fibers and extruding through a die.

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Fink discloses recyclable carpet comprising an isotactic polypropylene and fibers of nylon or polyester, or any of the natural or synthetic fibers, glass fibers, column 7, lines 31, 33-35 and 42-43 and column 8, lines 5-6, and column 9, lines 26-28, for the present claim 1. The fibers in Fink's invention are the same that in the present claim 1, therefore, the high modulus value would be inherent for the fibers in Fink's invention. A matrix of the isotactic polypropylene can include thermoplastic elastomer that is readable such as non-recycled material for the present claim 3. Fink discloses a method for recycling synthetic carpet by an extruder, abstract and column 13, lines 57-59. An extruder of any conventional or desired construction adapted to force the molten polymer through the die and extruding the polymer into a desired shape, column 5, lines 12-13, for the present claims 1 and 11.

The difference between the present claims and Fink is the requirement in the present claims 7 and 13 that fibers have a predetermined length of at least ½ inch or between 1/8 inch and ¼ inch, for the present claims 7-8 and 13, 20 and 22.

Sperk, Jr.'445 discloses a fiber-reinforced thermoplastic molding composition. The fibers include organic fibers such as aramid fibers and inorganic fibers such as glass fibers, column 17, lines 31-44. Glass fibers have a modulus of elasticity of around 10.5 million psi, column 17, line 3. Glass fibers having lengths of between about 1/8 inch to two inches can be utilized, column 17, lines 42-43. Also, the length of non-glass fibers can be from about 1/8 inch to about ½ inch, column 17, lines 66-67 and column 18, lines 1-3.

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It would have been obvious to one of ordinary skill in the art to modify the recyclable carpet comprising an isotactic polypropylene and fiber in Fink's invention by including fibers having specified length of approximately ½ inch as suggested by Sperk, Jr. because the length of the fiber is a benefit to improve the strength and flexibility of the obtained thermoplastic composite, and since the fibers having any length in Fink's invention can be utilized.

Claim Rejections - 35 USC § 102

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

- (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.
- 8. Claims 1 and 11 are rejected under 35 U.S.C. 102(b) as being anticipated by Fink U.S.Patent 5,578,357.

Fink has been discussed above in the paragraph 4.

Fink discloses recyclable carpet comprising an isotactic polypropylene and fibers. An isotactic polypropylene and fibers are readable in the present claims. The same fibers would inherently have the same high-modulus value as a minimum modulus of one million psi in the present claim 1. Fink discloses a method for recycling synthetic carpet by an extruder that could have the desired construction to force the molten polymer through the die, for the present claim 11.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Olga Asinovsky whose telephone number is 703-308-0041. The examiner can normally be reached on 9:00 to 5:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James Seidleck can be reached on 703-308-2462. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9310 for regular communications and 703-872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.

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O.A. June 25, 2003 Olga Asinovsky Examiner Art Unit 1711

James J. Seidleck Supervisory Patent Examiner Technology Center 1700